



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Mason Smoot  
Vice President/General Manager  
McDonald's USA LLC  
105 Eisenhower Parkway, 3rd Floor  
Roseland, NJ 07068  
Phone: (973) 287-1449

**NEW YORK STATE RESTAURANT  
ASSOCIATION,**

**Plaintiff,**

**- against -**

**NEW YORK CITY BOARD OF HEALTH,  
NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE, and Thomas R. Frieden,  
In His Official Capacity as Commissioner  
of the New York City Department of Health  
and Mental Hygiene,**

**Defendants.**

**No. 2008 Civ. \_\_\_\_\_**

**DECLARATION OF  
MASON SMOOT**

MASON SMOOT hereby declares under penalty of perjury:

1. I am Vice President and General Manager, New York Metro Region, for McDonald's USA LLC. McDonald's USA LLC is a member of the New York State Restaurant Association. I supervise McDonald's business in the New York Metro Region, one of twenty two regions in the United States.

2. McDonald's is a leader in communicating with our customers. We have been refining and improving our message and the way we communicate with our customers for many, many years. Our menu boards are a very big part of that effort. They are extremely important to our business. Our menu boards are the most important mode of communication inside the store, and they rival our road signs in overall importance in communicating with our customers.

3. Our menu boards are much different today than they were years ago, when I started with the company. They are now more streamlined, more condensed, and less cluttered. The way our menu boards look, and what they say, matters a great deal to McDonald's and its customers. Most of our menu-board space is used for point-of-purchase displays with a photograph, a one or two word description of the menu item, and pricing for the item alone and as a meal. An example is attached as Exhibit A.

4. We have also made communicating with our customers about health and nutrition a big priority in recent years. Our message and the way we communicate about nutrition is carefully thought out and comprehensive. We give our customers menu choices that include healthy items and healthy meals. We teach our customers about the importance of physical activity. And we give our customers nutrition information about our products using in-store brochures and tray liners; using our interactive website; and with a toll-free number. We also put key nutrition information right on the food wrappers of many of our products.

5. We do not put nutrition information on our menu boards. We think it would clutter the boards and make them confusing. Because an important part of the McDonald's experience is convenience, the time a customer spends waiting in line is extremely important to us. The average customer spends under three and a half minutes waiting to order and completing his or her transaction at a McDonald's restaurant. If that time is increased because of menuboard clutter or customer confusion, our lines will back up and we will lose business. The longer the line, the more customers who will choose to go somewhere else. Anything that contributes to gridlock hurts our business.

6. The proposed New York City menu-board regulation offends us for two major reasons. First of all, we know how to communicate with our customers about nutrition. We have been doing it for many years. We should not be forced to communicate with them in a way that the City thinks might be better for them. Forcing us to put something up on our menu boards is the same thing as putting words in our mouths and forcing us to say them.

7. Second, the regulation would put us at a competitive disadvantage and on an uneven playing field. If we are forced to comply with the regulation, we will have longer lines and confused customers. I believe that we will lose customers to competitors who do not disclose nutrition information and whose food may in fact have more calories than ours. Some of our competitors have never provided nutrition information to their customers. Restaurants not covered by Regulation 81.50, including mom-and-pop shops and chains that do not do business nationally, will have a competitive advantage; we will be hurt, and we may not be able to measure our losses with certainty.

8. When the City first proposed a regulation on this subject, the regulation said that the Board of Health would consider reasonable alternatives to menu board listings. We proposed disclosing calories for our menu items on in-store counter mats, along with reminders on the menu boards of the resources for finding complete nutrition information. A copy of our proposal is attached as Exhibit B. We already use counter mats in our New York City stores, and they are extremely popular with our customers. They provide a handy visual cue for our customers. A copy of a counter mat is attached as Exhibit C. Counter mats are particularly important in New York because New York is the most diverse city in America, and many of our customers do not speak English. The counter mats make ordering easy for these customers.

9. We felt that our proposal would do a better job providing calorie information in context and would work together with the in-store and other available nutrition information that we already provide to our customers, including tray liners and brochures. But the Health Department rejected this alternative and did not hold out any prospect that any other in-store alternative would be acceptable to it. A copy of the Health Department's letter to us is attached as Exhibit D.

10. We are left with no alternative but to seek help from this Court, to protect our ability to communicate with our customers the way we see fit.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 29, 2008



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Mason Smoot

# new premium chicken sandwiches



Extra Value Meals include medium fries and medium soft drink.



Large fries and large soft drink add

Meal OR Sandwich?



¿Comida completa o sandwich?

Meal OR To Go?



¿Comida completa o para llevar?

1 Big Mac



6 Club

Grilled or Crispy



5 Ranch BLT

Grilled or Crispy



2 Zucchini Burgers



7 Classic

Grilled or Crispy



3 Quarter Pounder with Cheese



8 Monterey Chicken Salad



4 Double Quarter Pounder



9 Grilled Chicken Sandwich



10 Filet-O-Fish®



Fruit & Walnut



Crispy or Grilled Chicken Bacon Ranch



Caesar



California Cobb



NEWMAN'S OWN<sup>®</sup>  
ALL-NATURAL DRESSINGS

Ranch • Caesar • Cobb

LOW FAT

Family Recipe Italian





# fruit & walnut salad

Extra Value Meals include hash browns and small coffee.

Meal OR Sandwich?



¿Comida completa o sandwich?

Dine in OR To Go?



¿Comer en el restaurante o para llevar?

Extra Value Meals include hash browns & coffee.

Meal OR Sandwich?



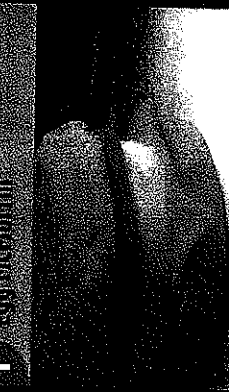
¿Comida completa o sandwich?

Dine in OR To Go?



¿Comer en el restaurante o para llevar?

1 Egg McMuffin



2 Bacon, Egg & Cheese Biscuit



3 Sausage McMuffin with Egg



4 Sausage Biscuit with Egg



5 Sausage Biscuit



6 Bacon, Egg & Cheese Bagel



7 Steak, Egg & Cheese Bagel



8 Two Sausage Burritos



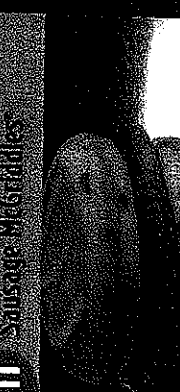
9 Bacon, Egg & Cheese McGriddles



10 Sausage, Egg & Cheese McGriddles



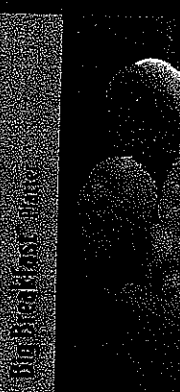
11 Sausage McGriddles



Hot Cakes with Sausage & Egg



Big Breakfast™ Plate



Deluxe Breakfast™ Plate





Rick Colón  
Vice President & GM

May 17, 2007

Commissioner Thomas Friedman  
NYC Department of Health and Mental Hygiene  
Bureau of Food Safety and Community Sanitation  
253 Broadway Street, CN 59A, 13<sup>th</sup> Floor  
New York, NY 10007  
Attn: Calorie Labeling Proposals

Dear Commissioner Friedman,

On behalf of the New York Metro Region, we present for your approval our proposed approach to comply with the section 81.50 of the New York City Health Code on calorie labeling.

Your meeting of March 5, 2007, with representatives of McDonald's and other members of the National Restaurant Association, clarified alternative means for making caloric information available to patrons. After careful review of these options with our New York owner-operators, restaurant operations, nutrition and merchandising experts, we propose two approaches (one for in restaurant, one for the drive-thru) which we believe meet your requirements. Artwork is attached in this email, with specific reference in the letter to the various artwork exhibit examples, and actual size reproductions are being sent to you via overnight delivery.

#### Information in Context

Our proposed formats further the philosophy of McDonald's Nutrition Information Initiative, which is grounded in research by The Hartman Group and the International Food Information Council Foundation (IFIC), that:

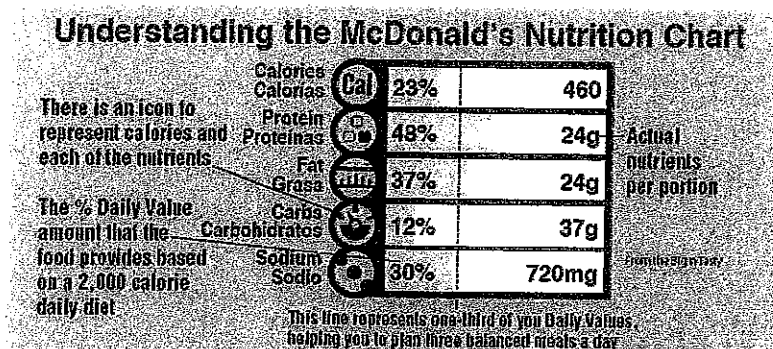
- Customers benefit from a broader nutrition context when making menu choices
- Nine out of 10 consumers are unable to provide an accurate estimate of their recommended daily caloric intake.

McDonald's USA has worked to address this consumer education need through an innovative new approach featured in our nutrition information. In addition to the Nutrition Labeling and Education Act (NLEA) Nutrition Facts Panel, the nutrition information we display on our product packaging uses non-language specific dependent icons to represent the five elements experts agree are most relevant to consumer understanding of nutrition – calories, protein, fat, carbohydrates and sodium.

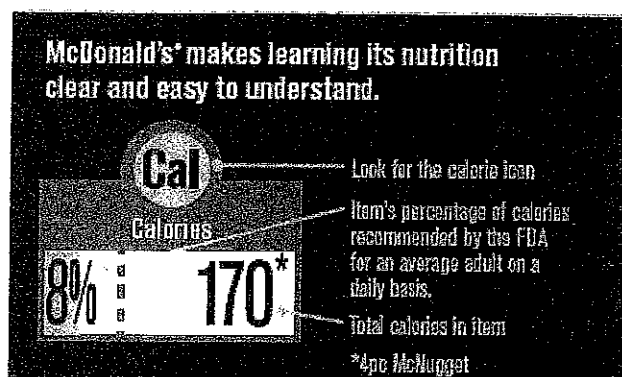


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This unique chart was created to convert the language of science into a more easily understood picture that is understood by all. This allows customers to anchor their food choices to the broader context of the recommended daily values for a 2,000-calorie diet.



Our proposed New York City signage approaches list both calories and their percentage against the recommended 2,000-calorie diet, as pictured in this specially created legend.

Customers will also be instructed on all materials of the need to add up the caloric content of their menu choices to understand the total caloric content of their meal.



Following this approach, our proposed signage mechanisms will then work synergistically with our already aggressive nutrition reporting campaign on packaging, in restaurant brochures, on trayliners and other out-of-restaurant sources.

With that as background, let's look specifically at our proposed McDonald's formats for communicating caloric information in our 254 New York City restaurants.

#### In-Restaurant Signage

We believe that to effectively deliver the caloric information you want conveyed to customers we need to present it in a more dedicated format along with the reminder that more complete information, on all nutrients, is available as well.



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Our proposal is to bundle together two different mechanisms (Exhibit A) to convey caloric information at key points during this decision-making path (Exhibit B) in concert with our existing nutrition information materials:

1. Counter Mat (Exhibits C1 and C2) -- As the customer approaches the front counter, a permanently displayed mat at each cashier/order station provides caloric information at the actual point of purchase. Mats are 10" x 14" and will be flipped over between breakfast items and lunch/dinner items each day. Counter mats are already located in 94% of our New York City restaurants and have become a primary ordering method for all non-English speaking customers to confirm their choice.
2. Menu Board Reminder (Exhibit D) -- When the customer looks to the menu board they are reminded that complete nutrition information is important when making their choice and available in a nearby brochure and on the trayliner at the counter.

Our research shows that customers on average spend 30 seconds in reviewing available signage at the front counter and on menu board when making their menu choices. These points of contact provide adequate presence of caloric information if desired.

Combined with the availability of our existing Nutrition Facts Brochure, complete nutrition information on each trayliner and labeled packaging, these five in-restaurant communications vehicles create a robust learning environment in our 254 New York City restaurants beyond the expectations outlined in Health Code section 81.50 (Exhibit E). Through repetitive exposure, our customers will know where to expect nutrition information to be available and in what format it will be displayed...thus leading to it being used more effectively.

#### Drive-Thru Signage

Drive-thru menu boards already seek to convey too much information. For customers to have time to contemplate caloric information, especially in the fast paced drive-thru setting, it would be more effective to present it in a separate format while they are waiting in line prior to their order.

We propose a stand-alone permanent sign placed in advance of the actual menu board in the drive-thru lane (Exhibit F). The separate, free-standing sign (20" x 59") dedicates significantly more space to present caloric information on our standard menu items. Menu items have been grouped by category, in the fashion that a customer contemplates choices, and presented in a defined column that makes it easier for the eye to identify comparisons.

These signs will be placed at our 91 New York City restaurants with drive-thru service (Exhibit G). We need to stress that we, like all restaurant companies participating in this effort, may need your help in facilitating any required zoning or permit approvals to construct new exterior signs. To secure approvals and arrange for production, construction and possibly even electrical needs for lighting, may take us longer than July 1 to put in place.

Prices are not included in these dedicated reporting vehicles because we can not dictate how our independent owner/operators price menu items. As you've probably already heard from the large, multi-unit restaurant companies, it is impossible for us to produce

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one single set of materials which list a consistent price. Plus, we believe that it is more productive to separate nutrition and price information at point-of-purchase communications. This allows for full consideration of nutrition information by the consumer, who needs to understand its relevance, independent of price.

So in conclusion, we propose a multi-level approach that we believe effectively meets the desired goal of Health Code section 81.50 and creates a synergistic effect at these different teachable moments in the restaurant. It's an approach which aligns more effectively with the way we know customers processes information to make menu decisions. We take it a step further by providing context on what the caloric information means in relation to a recommended daily diet. And, we remind people of the need to access and understand complete nutritional information when making menu choices.

We hope you are pleased with McDonald's proposed approach and would be eager to review it in person. We would appreciate your written acceptance of these presentation methods by May 21, so that we can begin production of these materials and education of our crew.

In anticipation of your feedback, I would like to reiterate our belief that Health Code section 81.50 can only work in the best interests of New Yorkers if it is required of all New York City restaurants, not the limited few who have already committed to transparency in nutrition information.

Sincerely,

A handwritten signature in black ink, appearing to read "R Colon". The signature is stylized with a large, looped "R" and a cursive "Colon".

Rick Colon  
Vice President, General Manager  
New York Metro Region  
McDonald's USA LLC  
105 Eisenhower Parkway, 3<sup>rd</sup> Floor  
Roseland, NJ 07068  
(973) 287-1446  
(973) 287-1512 Fax

Attachment – Proposal Artwork

# Extra Value



## Big Mac

\$

Meal

Sandwich

\$



**THE CITY OF NEW YORK**  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Michael R. Bloomberg  
Mayor

Thomas R. Frieden, M.D., M.P.H.  
Commissioner

nyc.gov/health

May 29, 2007

Rick Colon, Vice President, General Manager  
New York Metro Region  
McDonald's USA LLC  
105 Eisenhower Parkway, 3<sup>rd</sup> Floor  
Roseland, NJ 07068

Dear Mr. Colon:

The Department of Health and Mental Hygiene ("DOHMH") has received McDonald's request for non-binding feedback on its concepts for alternative calorie displays. Thank you for sending complete descriptions of the alternate design concepts.

As per the New York City Health Code, an alternative design may only be approved if it makes calorie information available at the point of purchase and if it displays calorie information at least as prominently as calorie information would otherwise be displayed using the format proscribed by Section 81.50(b)(1).

The Department has determined that the counter mats submitted by McDonald's do not meet the above standards. However, the proposed calorie information icons are an interesting innovation, and were they to be provided directly on menu boards, the design could potentially be approved. The stanchion design proposed for drive-through settings could also be approved, as long as calorie information is visible along the drive-through line before customers place orders, and the font size for calorie values is at least as large as the item name.

We welcome the opportunity to review further details of your designs with you.

Thank you,

A handwritten signature in black ink, appearing to read "Elliott S. Marcus".

Elliott S. Marcus  
Associate Commissioner

cc: T. Merrill  
J. Leighton  
M. Bassett

L. Silver  
R. Edman  
C. Manning

A. Caffarelli  
C. Young

BUREAU OF FOOD SAFETY AND COMMUNITY SANITATION  
BUREAU OF DAY CARE

2 Lafayette Street, 22<sup>nd</sup> Floor, CN 68, New York, New York 10007, (212) 676-2444 (212) 676-2424